

EXHIBIT M

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC. : Civil Action No.
vs. : 3:09CV620
LAWSON SOFTWARE, INC. : July 28, 2010

COMPLETE TRANSCRIPT OF THE MOTIONS HEARING
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Official Court Reporter
United States District Court

PROCEEDINGS

00:22:38 2
00:22:39 3 THE CLERK: Civil action number 3:09CV00620, ePlus,
00:22:55 4 Inc., versus Lawson Software, Inc. Will counsel please state
00:29:23 5 their names for the record and identify the parties they
00:29:26 6 represent.
00:29:30 7 MR. MERRITT: Greg Merritt, Christian & Barton, for
00:29:33 8 ePlus.
00:29:35 9 MR. ROBERTSON: Scott Robertson, Goodwin Procter
00:29:36 10 firm. With me are my partners.
00:29:41 11 MR. STRAPP: Michael Strapp.
00:29:43 12 MS. ALBERT: Jennifer Albert.
00:29:47 13 MR. CARR: Dabney Carr, Troutman Sanders, for Lawson
00:29:50 14 Software.
00:29:51 15 MR. McDONALD: Good morning, Your Honor. Dan
00:29:53 16 McDonald, Merchant & Gould, representing Lawson Software, and
00:29:57 17 with me today, I'd like to introduce Kirstin Stoll-DeBell, also
00:30:02 18 with Merchant & Gould, also representing Lawson Software.
00:30:07 19 MS. STOLL-DeBELL: Good morning.
00:30:09 20 THE COURT: Morning. I always think it's a good idea
00:30:49 21 to throw counsel a curve ball. I always enjoyed it so much
00:30:58 22 when judges did it to me.
00:30:59 23 I've decided, upon further reflection, that I would
00:31:02 24 like to hear your views on the damages issue reflected in
00:31:08 25 Lawson's -- what is it, motion in limine number one? Is that

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00:31:19 1 what it is?
00:31:19 2 MR. McDONALD: That's one of them, Your Honor.
00:31:20 3 There's one, two, and three all related to the damages issue.
00:31:25 4 THE COURT: I mean the settlement.
00:31:27 5 MR. McDONALD: That's where you want to start?
00:31:30 6 THE COURT: No, we'll start with the motion for
00:31:32 7 summary judgment, but I would like somebody to -- I'd like for
00:31:36 8 you to address that. I don't want a lot of -- we don't have a
00:31:41 9 lot of time to do this, and we've got a lot to do, so get right
00:31:44 10 to the point. All right, the motion for summary judgment on
00:31:48 11 the written description.
00:31:51 12 MR. McDONALD: Thank you, Your Honor. May it please
00:31:55 13 the Court, I have some binders with PowerPoint slides I'd like
00:31:59 14 to hand up.
00:31:59 15 THE COURT: Is that a question of law or fact?
00:32:01 16 MR. McDONALD: It's a question of fact, but the facts
00:32:04 17 are undisputed. Can I hand up the binders?
00:32:25 18 THE COURT: I'm sorry, it's in paragraph four of what
00:32:29 19 is to be argued.
00:32:30 20 MR. McDONALD: That was just a fast ball, not a curve
00:32:34 21 ball.
00:32:35 22 THE COURT: I don't know. Maybe that was a slider.
00:32:38 23 All right.
00:32:40 24 MR. McDONALD: Is the PowerPoint visible on the
00:32:44 25 screen right now for Your Honor?

06:57:43 **1** Now, to the extent that Dr. Shamos can offer evidence
 06:57:56 **2** focused only on those claims and why they anticipate it, he's
 06:58:04 **3** not bound by the evidence offered at the time of the second
 06:58:08 **4** supplemental. He can offer, just like Dr. Weaver can offer,
 06:58:12 **5** additional evidence directed to the same proposition, but that
 06:58:16 **6** isn't what he did.
 06:58:17 **7** What he did is, he went out and he concocted a whole
 06:58:21 **8** new game, and he's not going to be allowed to testify to it,
 06:58:26 **9** and he can't now go back and find all these references that he
 06:58:32 **10** constitutes -- that you all say on your side, Lawson, is new
 06:58:37 **11** evidence in support of the old contention. He's bound to those
 06:58:42 **12** things that were in his report on which he relied to support
 06:58:49 **13** the anticipations identified in the 14 claims.
 06:58:54 **14** I hope that everybody is clear on that, and in that
 06:58:58 **15** way, Lawson and ePlus are going to be treated the same. But I
 06:59:05 **16** don't believe the big difference is that Shamos didn't confine
 06:59:11 **17** himself to the original contentions as did Weaver when he
 06:59:15 **18** confined himself to the original infringement contentions and
 06:59:20 **19** then offered more evidence than, in fact, was referred to
 06:59:25 **20** earlier.
 06:59:27 **21** That's permissible for him, and it would be for Dr.
 06:59:32 **22** Shamos had he done that. I don't see that he did it, but if
 06:59:38 **23** you can show he did it, he did it, but let me tell when you
 06:59:41 **24** come to trial, when you have him on the witness stand, you
 06:59:44 **25** better have something to hand up to me to show me exactly how

06:59:47 **1** and where and when it -- what he's testifying to relates back
 06:59:54 **2** to those original claims because he has, I've been able to tell
 06:59:59 **3** from what I've been given, a propensity to roam and wander, and
 07:00:03 **4** you better get him back on the reservation, because if he roams
 07:00:08 **5** and wanders and I have to tell him more than once, he will be
 07:00:11 **6** roaming and wandering out the back door.
 07:00:13 **7** And the same is true for Dr. Weaver. They're not
 07:00:17 **8** going to take over the courtroom and do what they want to do.
 07:00:20 **9** It's going to be done according to the rules.
 07:00:23 **10** The same is true for these obviousness combinations,
 07:00:34 **11** 41 brand new ones. They weren't disclosed. Now, if he
 07:00:44 **12** identified Gateway references originally that were other than
 07:00:53 **13** the 2000/MRO manual, he can testify about that. If he didn't,
 07:00:59 **14** he can't.
 07:01:02 **15** The next issue is whether this evidence of Shamos's
 07:01:09 **16** that you're fighting over is relevant to the issue of damages.
 07:01:13 **17** It is said that it's relevant to the issue of non-infringing
 07:01:17 **18** alternative. I don't believe that that's been established.
 07:01:19 **19** It is true that the original orders on this point
 07:01:23 **20** that we were dealing with dealt with invalidity contentions,
 07:01:27 **21** but you can't get in all these extrinsic information that
 07:01:32 **22** really relate to points of invalidity under the guise of
 07:01:39 **23** something else. In other words, you can't dress them up in
 07:01:42 **24** another dress and send them out into the world. That would be
 07:01:50 **25** like -- would be like what Jefferson Davis did to lead the

07:01:56 **1** confederacy, dressed up like his wife in a dress and headed
 07:02:00 **2** out. We can't have that.
 07:02:02 **3** I don't see how any of this evidence bears on the
 07:02:10 **4** damages issue, nor do I see how the evidence that 6.5 -- six
 07:02:17 **5** and 5V systems and earlier are substantially the same as the
 07:02:23 **6** 8.0.3 systems that are accused has any probative value as to
 07:02:30 **7** the willfulness issue, and to the extent that it has value on
 07:02:35 **8** that issue, i.e., to the extent it's relevant on that issue,
 07:02:40 **9** the presentation of that evidence would offend Rule 403 because
 07:02:45 **10** it would cause delay, confusion, and make side trials out of a
 07:02:51 **11** very difficult case already, and the jury, I expect, I
 07:02:57 **12** anticipate would be hopelessly confused.
 07:03:03 **13** With the help of a mind substantially better than my
 07:03:09 **14** own, for sometime I have been trying to understand what's been
 07:03:13 **15** going on in this area, and if I can get confused by it, I have
 07:03:17 **16** every confidence that a jury can. I have to make sure what I'm
 07:03:21 **17** doing every time that I deal with this issue just to avoid
 07:03:26 **18** confusion.
 07:03:28 **19** I don't think it's pertinent to lack of specific
 07:03:31 **20** intent to induce infringement either or to discredit ePlus's
 07:03:36 **21** infringement and damages contention for the same reason. To
 07:03:39 **22** the extent it might be relevant, it's a 403 analysis, and the
 07:03:47 **23** use of the pre-2002 systems don't do anything but provide
 07:04:02 **24** confusion, delay.
 07:04:08 **25** Also, to the extent that Shamos is proffered to

07:04:27 **1** testify to something on infringement, he already testified that
 07:04:31 **2** he didn't study the information on it for infringement
 07:04:36 **3** purposes. He did it for invalidity purposes, that is the
 07:04:41 **4** information we're talking about, and so his opinions on that
 07:04:48 **5** point that are repeated in the infringement issue from the
 07:04:51 **6** invalidity issue are not either relevant, nor do they fit --
 07:05:00 **7** nor do they satisfy the fit part of *Daubert*.
 07:05:07 **8** All right, I think that takes care of all the issues
 07:05:09 **9** in that motion. Now we have defendant's motion number five.
 07:05:49 **10** Who is going to do that?
 07:05:51 **11** MS. STOLL-DeBELL: I am, Your Honor. Just gathering
 07:05:55 **12** my stuff.
 07:05:58 **13** THE COURT: You know what? It might be the best
 07:06:00 **14** thing to do is let Mr. Robertson go first and explain just
 07:06:05 **15** exactly who is testifying to what so that I get that fixed in
 07:06:09 **16** my mind. That's this motion, isn't it? Do we have the right
 07:06:12 **17** one, limit to one expert on infringement and one on invalidity?
 07:06:17 **18** MS. STOLL-DeBELL: Yes, that's right. I can tell you
 07:06:19 **19** also.
 07:06:20 **20** THE COURT: You want to do it? Why don't you go
 07:06:22 **21** ahead. Since you're planning to do it, you go ahead. Which
 07:06:24 **22** one of these tabs is it? Five.
 07:06:32 **23** MS. STOLL-DeBELL: We're looking at slide number 38.
 07:06:36 **24** Does that help you?
 07:06:36 **25** THE COURT: Let me get your book first. All right.

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09:06:03 1 but at least it is irrelevant as to the method -- I mean as to
 09:06:08 2 the apparatus even in the acknowledgment of the defendant, and
 09:06:13 3 it is -- it is not cumulative evidence, it being the only
 09:06:19 4 actual system that shows the RQ in operation in the hands of
 09:06:25 5 the customer, and the prejudicial aspect, I think, that would
 09:06:28 6 arise from the missteps that the woman made can be cured by
 09:06:34 7 just letting the jury see the videotape and see how it works.
 09:06:39 8 But I'm going to instruct you both to review it carefully, and
 09:06:43 9 if what we've got is a comedy of errors, it's not going to come
 09:06:47 10 in because that's wasteful of the jury's time. So the motion
 09:06:52 11 will be provisionally denied.
 09:06:59 12 That leaves me with a few things to do; is that
 09:07:02 13 right? We don't have any more motions to argue; is that right?
 09:07:07 14 MR. McDONALD: That's correct, Your Honor. Your
 09:07:09 15 Honor, I wonder if I would have leave because I have a
 09:07:12 16 seven o'clock flight.
 09:07:13 17 THE COURT: Hit the road.
 09:07:15 18 MR. McDONALD: Thank you.
 09:07:17 19 THE COURT: You are cutting it close as it is.
 09:07:19 20 MR. McDONALD: I agree. Thank you, Your Honor.
 09:07:24 21 THE COURT: All right, Mr. McDonald is gone, but
 09:07:27 22 we're going to go. You all have a time to talk with Judge
 09:07:35 23 Dohnal?
 09:07:35 24 MR. ROBERTSON: August 19th.
 09:07:36 25 MR. CARR: Correct, Your Honor.

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09:07:38 1 THE COURT: August 19th. Both of you have some
 09:07:42 2 problems in the case, folks, problems that warrant a serious
 09:07:47 3 look at whether you're going to settle it or not, and I will
 09:07:53 4 say -- I wasn't saying this for settlement purposes. I
 09:07:58 5 genuinely believe that your damages case takes a hit for the
 09:08:03 6 reasons that I expressed, and I wasn't trying to communicate
 09:08:06 7 that for purposes of inviting you all to settle, but whereas
 09:08:12 8 here you have liability problems, and you might make sure you
 09:08:16 9 communicate this to Mr. McDonald, and you do, I think, have
 09:08:20 10 some liability problems, and they have damage problems.
 09:08:24 11 That usually provides a reasonably efficacious way in
 09:08:29 12 which to try to reach an accommodation that businesspeople can
 09:08:33 13 live with. All right? Thank you. We will be in adjournment.
 14
 15 (End of proceedings.)
 16
 17
 18 I certify that the foregoing is a correct transcript
 19 from the record of proceedings in the above-entitled matter.
 20
 21
 22 /s/
 23 F. E. Peterson, RPR Date
 24
 25